IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FOURTH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 1052 of 1996

Between:

1 Burra Mallaiah, S/o Papaiah
R/o.Edikuda Village, Chandur Mandal,
Nalgonda Dist.
2 Burra Sathaiah, S/o Mallaiah
R/o.Edikuda Village, Chandur Mandal,
Nalgonda Dist.
3 Burra Venkataiah, S/o Mallaiah
R/o.Edikuda Village, Chandur Mandal,
Nalgonda Dist.
4 Burra Maraiah, S/o Mallaiah
R/o.Edikuda Village, Chandur Mandal,
Nalgonda Dist.
5 Burra Lingaiah, S/o Mallaiah
R/o.Edikuda Village, Chandur Mandal,
Nalgonda Dist.
6 Burra Seenaiah, S/o Mallaiah
R/o.Edikuda Village, Chandur Mandal,
Nalgonda Dist.
7 Burra Chandra, D/o Mallaiah
R/o.Edikuda Village, Chandur Mandal,
Nalgonda Dist.

....PETITIONERS

AND

1 The District Collector
Nalgonda.
2 The Revenue Divisional Officer, Nalgonda Division.
Nalgonda.
3 The Madal Revenue Officer

Chandur Mandal, Nalgonda Dist.

....RESPONDENTS

THE HONOURABLE SRI JUSTICE C.Y.SOMAYAJULU

W.P.NO. 1052 OF 1996

ORDER:

Petitioners who are the children of Burra Mallaiah, owner of Ac. 2-55 cents in S.No. 39 of Indukuda village, filed this petition questioning the notification dated 4-1-1984 issued by the 1st respondent under Section 4(1) of the Land Acquisition Act (the Act) proposing to acquire the said land along with Ac.2-18 gts. In S.No.38 of the same village for providing house sites to scheduled castes, notified Tribes backward classes and other weaker section of the village. Their case is that they are small farmers cultivating small extents of land and that income from that land is their only source of income and since there is no urgency for dispensing with the enquiry under Section 5-A of the Act, and since possession of the land was not taken over from them, the aforesaid notification is liable to be quashed.

2. The case of the respondents is that the Tahsildar, after making an inspection and visiting several fields in the village, for finding out their suitability as house sites, had found that Ac.4-73 cents of land in S.Nos. 38 and 39 belonging to the Mangala Mallaiah and Burra Mallaiah (1st petitioner) is most suitable for that purpose and submitted a report accordingly and keeping in view the urgency, 1st respondent (Collector) dispensed with the enquiry under Section 5-A of the Act. Since 1st petitioner was not present for service of notice and since the members of his family refused to take notice on 31-8-1984, a copy of the notice was affixed to the house in

the presence of witnesses, and thereafter notice in Form No. 10 was also given to the 1st petitioner and other pattedars on 18-10-1984 to vacate the land, whereupon 1st petitioner filed a petition before the Tahsildar in Case No. 1009 of 1984 contending that since he has large family, which is depending on the income from the lands, if his land is acquired he would be put to hardship and that the valuation fixed by the Tahsildar (Land Acquisition Officer) is very less than the prevalent market rate and that the value of his land would be Rs.15,000/- per acre, and requested the Tahsildar to refer the matter to Civil Court for enhancement of the compensation. Since, possession of the acquired land was taken over on 31-10-1984 itself by the Revenue Inspector under a panchanama, and since the Land Acquisition Officer passed an award and disbursed the compensation payable to the owner of the land in S.No.38, which was also acquired, and since 1st petitioner refused to receive the compensation though several notices were issued to him this petition is not maintainable.

3. The contention of the learned counsel for the petitioners is that since the procedure contemplated by the Act for acquisition of land is not followed, and since petitioners are small farmers, since the land said to have been acquired is still in their possession, the impugned notification is liable to be quashed because the report of the Commissioner clearly establishes the possession of the petitioners over the land proposed to be acquired.

4. The contention of the learned Assistant Government Pleader is that since the report of the Commissioner does not show the existence of standing crop in the land and since 1st petitioner owns Ac. 10-09 Gts, the contention that petitioners are small farmers cannot be accepted and since an Award was passed in 1984 itself, this petition filed 12 years after passing the award, questioning the notification is not maintainable.

5. When asked to produce the records the learned Assistant Government Pleader stated that the records were lost in the Naxalite attack on the office of the Mandal Revenue Officer, Chandur.

6. At the instance of the petitioner a commissioner was appointed to inspect the lands of the 1st petitioner, which is covered by the impugned notification. He made an inspection on 12-2-1996 at 6-00 p.m. and filed his report. His report shows that

there was no standing crop and that there were traces of cutting of crop in the land. This report of the Commissioner, who made the inspection on 12-2-1996 at about 6-00 p.m. i.e. about 12 years of the impugned notification, is of no help to petitioners because Commissioner cannot say as to who is in possession of a disputed land. In this case, as stated above, the report of the Commissioner does not show the existence of standing crop. The Commissioner visited the land about 12 years after the notification impugned. The case of the respondents is that possession of the land of the 1st petitioner and the other land notified for acquisition was taken over on 31-10-1984 under a panchanama by the Revenue Inspector. Judicial notice can be taken of the fact that villagers, taking advantage of a land belonging to the Government being vacant, would many a time make encroachment therein and raise crops therein. So, somebody in the village might have raised a crop in some portion of the land acquired, and could have cut and removed it prior to the visit of the Commissioner. Since the notification impugned shows that Ac.2-18 gts in S.NO. 38 belonging to M. Mallaiah also was notified for acquisition and since the contention of the learned Asst. Govt. Pleader is that the said M. Mallaiah received the compensation granted to him under the Award and that 1st respondent refused to receive the amount, the possibility of the Land Acquisition Officer taking possession of only a part of the land and failing to take possession of the remaining land covered by the same notification are too remote. So even assuming that the petitioners raised the crop in the land visited by the Commissioner, such cultivation could only be as a trespasser but not as owner. Learned counsel for petitioners relying on the entries in the copies of pahanies contended that these entries show the possession of the petitioners. The entries in the copies of the pahanies for the years 1989-90 to 1991-92, in column 13 therein are not consistent. In the pahani for 1989-90 in Col. No.13 relating to persons in possession, four names are mentioned. In the copies of the pahani for 1990-91 and 1991-92 in column No. 13 the name of Burra Mallaiah is mentioned. In the copies of the pahanies for the years 1992-93 and 1993-94 S.No. 39 is shown into four sub-divisions, which till then was shown as only S.No.39. In both these pahanies for 1992-93 and 1993-94 in respect of S.No.39/A its extent is shown as Ac.2-22 gts. In column No.13 it is mentioned as SC, BC colony. In the pahani for 1993-94 in column No. 6 also the said extent of Ac. 2-22 gts in S.No.39/AA is noted as ‘colony’. Petitioners did not produce Land Revenue Receipts to show that they paid land revenue in respect of the acquired land also. What ever may be the reason for noting in the pahani upto 1992-93, since the

pahanies for 1992-93 and 1993-94, which are prior to the filing of this petition, show that S.No. 39/AA to an extent of Ac.2-22 Gts. is 'colony', the contention of the petitioners that land notified for acquisition was not taken possession of cannot be accepted, because their own documents belie their contention.

7. The contention of petitioners that they are small farmers cannot be accepted because the pattedar pass book produced by the petitioners shows that 1st petitioner has Ac.11-04 cents in various survey numbers. In the circumstances a presumption can be drawn that petitioners No. 2 to 7 might have been impleaded as parties, to gain sympathy and to show that each of them would get small extents in partition. The fact that 1st petitioner had in 1994-95 obtained a pass book in his own name showing that he owns Ac. 11-04 cents in various survey numbers itself would belie any partition prior to 1994-95. Since the acquisition was in 1984, even assuming that the age of the petitioners mentioned in the petition are true, petitioners 3 to 7, if not all petitioners 2 to 7 would be minors by 1984 and since 1st petitioner only could be the manager of the family, he cannot be said to be a small farmer.

8. Since award was passed and compensation was paid to one of the awardees and since 1st petitioner is said to have refused to receive the compensation awarded and since the award passed is not challenged, though the pahanies for 1992-93 and 1993-94 relied on by the petitioners themselves show that Ac. 2-22 gts in S.No. 39/A is SC, BC Colony, petitioners are not entitled to any relief.

9. Hence, this writ petition filed about 12 years after the impugned notification and after an award was passed with a prayer to quash the notification for acquisition, is dismissed. No order as to costs.

_____

C.Y.Somayajulu, J.

24th August, 2005.

KM

THE HONOURABLE SRI JUSTICE C.Y.SOMAYAJULU

W.P.NO. 1052 OF 1996

24th August, 2005.